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IN THE
COURT OF APPEALS OF INDIANA

MIGUEL A. QUINONEZ-TREJO,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0610-CR-502
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0511-FB-159

June 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Following a jury trial Miguel Quinonez-Trejo appeals his convictions of criminal confinement, a Class B felony, battery, a Class C felony, and resisting law enforcement, a Class A misdemeanor, and his aggregate sentence of fifteen years. Quinonez-Trejo raises two issues, which we expand and restate as three: (1) whether sufficient evidence supports his conviction for criminal confinement; (2) whether the trial court properly ordered that Quinonez-Trejo's sentences run consecutively; and (3) whether his sentence is inappropriate based on the nature of the offense and his character. Concluding that sufficient evidence supports the judgment, that the trial court did not abuse its discretion in ordering the sentences to run consecutively, and that his sentence is not inappropriate, we affirm.

Facts and Procedural History

On October 26, 2006, Quinonez-Trejo was driving when he came across his ex-girlfriend, Christina Johnston, who was walking with Donna Day. Quinonez-Trejo pulled up next to the pair and asked Johnston to accompany him in his vehicle. Johnston declined, and Quinonez-Trejo drove away. Quinonez-Trejo returned shortly thereafter, again pulled up near the pair and this time got out of his vehicle brandishing a knife. Johnston ran away from Quinonez-Trejo, who caught up to her, put the knife to her throat, and told her to get into the car or he would kill her. Quinonez-Trejo then took her back to his car, pushed her into the vehicle, and shut and locked the door. Johnston testified that she did not attempt to escape at that point because she feared that Quinonez-Trejo would catch her again and kill her. Quinonez-Trejo told Day that he would kill her if she called the cops and then got into the

vehicle and began punching Johnston in the face and hitting her with the handle end of a screwdriver. Quinonez-Trejo told Johnston that he was going to kill her because she was friends with Day and because he suspected her of being with another man. Quinonez-Trejo drove off, and Day went to a nearby house and called the police.

Quinonez-Trejo drove to a park, hitting Johnston the entire time he was driving. When Quinonez-Trejo arrived at the park, he turned off the car and repeatedly attempted to stab Johnston with his knife, actually stabbing her once in her forearm. After Johnston was able to get the knife away from Quinonez-Trejo, he picked up the screwdriver and struck Johnston in the forehead with its tip. During this beating, Quinonez-Trejo held Johnston down by placing his knees on her neck and told Johnston that if she didn't do what he told her to, he was going to kill her and dump her body in a lake.

After Quinonez-Trejo was finished beating Johnston, he drove to a gas station, told Johnston not to leave the car, and purchased two bottles of water. He returned to the vehicle and told Johnston to use them to clean up. Johnston did not try to escape while Quinonez-Trejo was in the gas station because she was afraid that Quinonez-Trejo would kill her. Quinonez-Trejo then drove to Walgreens and instructed Johnston to write down what kind of bandages she needed. Quinonez-Trejo again told Johnston not to leave the vehicle, went into the store, and purchased bandages. Again, Johnston did not try to escape because she was afraid of Quinonez-Trejo. Quinonez-Trejo then drove to a friend's apartment complex to ask if Johnston could use his shower to clean up.

When they arrived at the apartment complex, Quinonez-Trejo exited the vehicle and

spoke to his friend, who was standing outside the apartment building. While Quinonez-Trejo and his friend were conversing, a police officer drove by. Quinonez-Trejo ran back to the vehicle, and moved it to a parking space. The police officer then pulled up behind Quinonez-Trejo, who exited his vehicle and took off running into a wooded area. Additional officers arrived on the scene, and, after a foot pursuit, Quinonez-Trejo was eventually located hiding among leaves and debris. Quinonez-Trejo refused to cooperate, and it took three officers to place him in handcuffs.

The State charged Quinonez-Trejo with criminal confinement, battery, intimidation, and resisting law enforcement. A jury trial was held, and the jury found Quinonez-Trejo guilty of criminal confinement, battery, and resisting law enforcement, and not guilty of intimidation. The trial court conducted a sentencing hearing, and sentenced Quinonez-Trejo to ten years for criminal confinement, four years for battery, and one year for resisting law enforcement. The trial court ordered that the sentences run consecutively, for an aggregate sentence of fifteen years. Quinonez-Trejo now appeals his convictions and sentence.

Discussion and Decision

I. Sufficiency of the Evidence

Quinonez-Trejo argues that insufficient evidence supports his conviction for criminal confinement. Our standard of review when confronting claims of insufficient evidence is well established. We will not reweigh evidence or judge witnesses' credibility. Grim v. State, 797 N.E.2d 825, 830 (Ind. Ct. App. 2003). We will consider only the evidence favorable to the judgment and the reasonable inferences drawn therefrom. Id. We will

affirm a conviction if the lower court's finding is supported by substantial evidence of probative value. Id.

As our supreme court has explained, the criminal confinement statute "includes two distinct types of criminal confinement by encompassing both confinement by non-consensual restraint in place and confinement by removal." Kelly v. State, 535 N.E.2d 140, 140 (Ind. 1989). Here, the State charged Quinonez-Trejo with confinement by non-consensual restraint. Therefore, in order to support the conviction for criminal confinement, the State must have introduced evidence that Quinonez-Trejo knowingly and intentionally confined Johnston without her consent.[1] Ind. Code § 35-42-3-3(a)(1); Kelly, 535 N.E.2d at 141. Quinonez-Trejo argues that insufficient evidence exists to show that he confined Johnston at any point. We disagree.

In making his argument, Quinonez-Trejo completely ignores Johnston's testimony and focuses solely on his own version of the events.[2] He describes the initial encounter between him and Johnston as follows: "When [Quinonez-Trejo] returned to where [Johnston and Day] were crossing the street he exited his car and said to [Johnston] 'let's go.' [Johnston] entered the car and [Quinonez-Trejo] shut the door." Appellant's Brief at 12. However, Johnston testified that Quinonez-Trejo "parked and he got out with a knife and I started

[1] Because the State charged Quinonez-Trejo with criminal confinement as a Class B felony, it also had to prove that Quinonez-Trejo was armed with a deadly weapon. Ind. Code § 35-42-3-3(b)(2)(A). Criminal confinement also constitutes a Class B felony if it results in serious bodily injury or is committed on an aircraft. Ind. Code § 35-42-3-3(b)(2)(B), (C).

[2] Quinonez-Trejo's statement of the facts likewise presents the version of the events that Quinonez-Trejo presented at trial, and not that presented by Johnston and Day. We direct counsel to Indiana Appellate

running across the street and he chased me and put the knife up to my throat so I went with him to the car." Tr. at 141. Quinonez-Trejo also claims that Johnston "entered the car on the mistaken belief that [Quinonez-Trejo] was carrying a knife, when in fact he was holding a sheath." Appellant's Br. at 12. However, Johnston explicitly stated that the knife "was not in the sheath when it come out. [sic] He had it without the sheath. The sheath was in the car." Tr. at 142. Day also testified that Quinonez-Trejo was holding a knife to Johnston's neck when he was "dragging her more or less to the car." Id. at 199. Quinonez-Trejo goes on to argue, "there was no testimony that [Johnston] was forced to remain in the car through force or threat of force," and that she "was not confined to the vehicle physically or mentally." Appellant's Br. at 12. Among other things, Johnston testified that at one point, Quinonez-Trejo "turned my body and pushed me down under his body. And his knees were on top of me and they were right in my neck." Tr. at 156. By holding Johnston down by placing his knees on her neck, Quinonez-Trejo clearly used physical force to confine Johnston to the vehicle against her will. Johnston also testified that Quinonez-Trejo told her that if she did not do exactly what he told her to do, he would kill her and dump her body in a lake, and that on at least two occasions he instructed her to not leave the car. Johnston was, without a doubt, confined to the vehicle by a threat of force.

Quinonez-Trejo's argument boils down to a request that we accept his version of the facts and completely ignore Johnston and Day's testimony. We decline this invitation, as it is not our province to judge witness credibility or reweigh the evidence. Sufficient evidence

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Rule 46(A)(6)(b), which states: "The facts shall be stated in accordance with the standard of review

exists to support a finding that Quinonez-Trejo confined Johnston to his vehicle without Johnston's consent.

II. Sentencing

A. Consecutive Sentences

We review a trial court's decision to order consecutive sentences for an abuse of discretion. Edmonds v. State, 840 N.E.2d 456, 461 (Ind. Ct. App. 2006), trans. denied, cert. denied, 127 S.Ct. 497 (2006). A single proper aggravator can support the imposition of consecutive sentences. Ingle v. State, 766 N.E.2d 392, 396 (Ind. Ct. App. 2002), trans. denied. When the trial court orders consecutive sentences, we will examine the record to ensure that the trial court adequately explained why it ordered the sentences to run consecutively. Id.

In its sentencing order, the trial court stated: "Court finds each crime is separate and distinct, one from the other and each is entitled to its own sentence. To run the sentences concurrently depreciates the seriousness." Appellant's Appendix at 120. Quinonez-Trejo argues that this statement is not sufficient to support the imposition of consecutive sentences because "the only aggravator it disclosed was incorrect." Appellant's Br. at 15.

We agree that the trial court's statement that ordering the sentences to run concurrently would depreciate the seriousness of the offenses is not a proper aggravating circumstance for the purpose of ordering consecutive sentences. Mitchem v. State, 685 N.E.2d 671, 679 (Ind. 1997). When the trial court considers an improper aggravator, we then

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appropriate to the judgment or order being appealed."

look to determine whether the remaining aggravating circumstances will support the sentence. Ingle, 766 N.E.2d at 395-96. Here, the trial court indicated that it considered the three crimes to be distinct and separate. "It is a well established principle that the fact of multiple crimes or victims constitutes a valid aggravating circumstance that a trial court may consider in imposing consecutive or enhanced sentences." Truax v. State, 856 N.E.2d 116, 126 (Ind. Ct. App. 2006) (quoting O'Connell v. State, 742 N.E.2d 943, 952 (Ind. 2001)); see Morgan v. State, 675 N.E.2d 1067, 1073 (Ind. 1996) (fact of multiple crimes constituted aggravating circumstance sufficient to support trial court's imposition of consecutive sentences). Therefore, the trial court's sentencing statement indicates that it considered a valid aggravating circumstance in support of ordering consecutive sentences. We conclude that the trial court acted within its discretion in ordering the sentences to run consecutively.

B. Appropriateness of Quinonez-Trejo's Sentence

Quinonez-Trejo next argues that his sentence is inappropriate. When reviewing a sentence imposed by the trial court, we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We have authority to "revise sentences when certain broad conditions are satisfied." Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005). When determining whether a sentence is inappropriate, we recognize that the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006).

Here, the trial court sentenced Quinonez-Trejo to the advisory sentences for criminal confinement and battery. Ind. Code §§ 35-50-2-5 (advisory sentence for Class B felonies is 10 years), 35-50-2-6 (advisory sentence for Class C felonies is four years). The crime of resisting law enforcement, as a misdemeanor, does not have an advisory sentence. Ind. Code § 35-50-3-2 (one who "commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year").

Quinonez-Trejo does not articulate an argument that the nature of the offenses justifies reduction of his sentences. Likewise, our examination of the record leaves us convinced that the sentences are not inappropriate based on the nature of the offenses. As discussed above, one commits criminal confinement as a Class B felony when one knowingly or intentionally confines the victim without consent while armed with a deadly weapon. Ind. Code § 35-42-3-3. One commits battery as a Class C felony when one "knowingly or intentionally touches another person in a rude, insolent, or angry manner," and the touching "results in serious bodily injury" or is "committed by means of a deadly weapon." Ind. Code § 35-42-2-1(a)(3).

Quinonez-Trejo's actions here go far beyond that required to satisfy the statutory requirements for the crimes of battery and criminal confinement. Quinonez-Trejo battered Johnston for an extended period of time, using his fists, a knife, and both ends of a screwdriver. As evidenced by Johnston's testimony, and photographs introduced at trial, Quinonez-Trejo's beating caused severe bruising and multiple lacerations. In addition to this physical abuse, Quinonez-Trejo threatened Johnston with death if she disobeyed his orders,

and threatened Day with death if she reported Quinonez-Trejo's actions to the police. Notably, Quinonez-Trejo's actions were completely unprovoked, and were apparently in response to Johnston's refusal to accompany him in his vehicle. The unprovoked and brutal nature of the battering and confinement convinces us that reduction of the sentence is not warranted based upon the nature of the offenses.

With regard to his character, Quinonez-Trejo points out that his criminal history consists only of a misdemeanor conviction for operating a vehicle while never having received a driver's license. We recognize that the legislature has determined that a lack of criminal history is an important enough consideration to enumerate it in the statutory list of mitigating circumstances that the trial court may consider, see Ind. Code § 35-38-1-7.1(b)(6), and that "[this] statute appropriately encourages leniency toward defendants who have not previously been through the criminal justice system." Biehl v. State, 738 N.E.2d 337, 339 (Ind. Ct. App. 2000), trans. denied. However, Quinonez-Trejo has not been leading a law-abiding life, as he is residing in this country as an illegal alien. See Samaniego-Hernandez v. State, 839 N.E.2d 798, 806 (Ind. Ct. App. 2005) (noting that "being an illegal alien is itself more properly viewed as an aggravator than as a mitigator"); Alexander v. State, 837 N.E.2d 552, 556 (Ind. Ct. App. 2005), disapproved of on other grounds, Ryle v. State, 842 N.E.2d 320 (Ind. 2005), cert. denied,127 S.Ct. 90 (2006) (trial court properly considered defendant's status as an illegal alien an aggravating circumstance); cf. Bostick v. State, 804 N.E.2d. 218, 225 (Ind. Ct. App. 2004) (although defendant lacked criminal history, evidence indicating she had a substance abuse problem and engaged in a sexual relationship with a fifteen-year-

old showed she "was leading a less than law-abiding life").

Also, Quinonez-Trejo's actions with regard to the present offenses comment negatively upon his character. In response to Johnston's refusal to accompany him, Quinonez-Trejo threatened Johnston and Day's lives, and severely beat Johnston with two deadly weapons. These unprovoked acts demonstrate Quinonez-Trejo's unwillingness to conform to the laws of society, and propensity for violence when not obeyed. His actions in resisting arrest further demonstrate his lack of respect for the laws and for our criminal justice system. Although Quinonez-Trejo's criminal history is indeed brief and somewhat unrelated,[3] we cannot conclude that his character renders his sentence inappropriate.

Conclusion

We conclude that sufficient evidence exists to support Quinonez-Trejo's conviction for criminal confinement. We further conclude that the trial court acted within its discretion in ordering the sentences to run consecutively, and that the aggregate fifteen-year sentence is not inappropriate given the nature of the offenses and Quinonez-Trejo's character.

Affirmed.

SULLIVAN, J., and VAIDIK, J., concur.

[3] We note that Quinonez-Trejo was driving during the current offense. There is no evidence regarding whether Quinonez-Trejo had a driver's license at the time of the commission of the crimes, but his illegal alien status makes it highly unlikely that he had such a license.